IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 325.

PAMPANGA SUGAR MILLS, *Petitioner*,

vs.

WENCESLAO TRINIDAD, as Collector, *Respondent*.

BRIEF FOR PETITIONER.

This case is here on a writ of certiorari granted by this Court to review a judgment of the Supreme Court of the Philippine Islands, rendered February 13, 1928, affirming a judgment of the Court of First Instance of Manila.

OPINION OF THE COURT BELOW.

The official report of the opinion of the Supreme Court of the Philippine Islands has not yet appeared

in the Philippine reports. The opinion of the Court, together with the concurring and dissenting opinions, appear in the record at page 47, et. seq.

JURISDICTION.

The amount in controversy exceeds $25,000 and, therefore, this Court has jurisdiction under the provisions of Section 7 of the Act of Congress of February 13, 1925, 43 Stat. 940.

STATEMENT OF THE CASE.

Petitioner is now and was during the years 1920, 1921 and 1922 the owner and operator of a sugar mill at Del Carmen, Province of Pampanga, Philippine Islands. During those years, respondent, as Collector of Internal Revenue of the Islands, levied a tax of one per cent on the sales value of certain sugar produced at said mill and sold by petitioner. In order to avoid penalties, petitioner paid the tax under protest, amounting to 60,911.42 pesos. The law of the Islands under which the tax was levied and collected is found in Sections 1459 and 1460 of Act No. 2711 of the Philippine Legislature, known as the Administrative Code of 1917. The pertinent provisions of these two sections are as follows:

> "Sec. 1459. *Percentage tax on merchants' sales.* —All merchants not herein specifically exempted shall pay a tax of one per centum on the gross value in money of the commodities, goods, wares, and merchandise sold, bartered, exchanged, or consigned abroad by them, such tax to be based on the actual selling price or value of the things

Note: Italics ours wherever used in this brief.

in question at the time they are disposed of or consigned, whether consisting of raw material or of manufactured or partially manufactured products, and whether of domestic or foreign origin. The tax upon things consigned abroad shall be refunded upon satisfactory proof of the return thereof to the Philippine Islands unsold.

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"'Merchant,' as here used, means a person engaged in the sale, barter or exchange of personal property of whatever character. Except as specially provided, the term includes manufacturers who sell articles of their own production and commission merchants having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected, but does not include merchandise brokers."

"Sec. 1460. *Sales not subject to merchants' tax.*—In computing the tax above imposed transactions in the following commodities shall be excluded:

"(a) Things subject to a specific tax.

"(b) Agricultural products when sold by the producer or owner of the land where grown, or by any other person other than a merchant or commission merchant, whether in their original state, or not."

After the payment of the tax so made under protest, petitioner demanded return of the money paid and upon refusal brought this action to recover the amount. The Court of First Instance denied petitioner relief and entered judgment for respondent. That judgment on appeal was affirmed by the Supreme Court of the Philippine Islands. It is to be noted, however, that the case was under consideration by the Supreme Court for a period of three years and

during that period was orally argued to the Court twice, and was submitted to the Court three separate times. The Court was unable to reach a decision after the two oral arguments, eight of the Justices being divided four to four and the ninth Justice being disqualified. After the third argument, the Court was still unable to decide the case, the eight Justices still being equally divided. Thereupon one of the Justices, who had been consistently voting as one of the four who were of opinion that the tax had been illegally levied and should be recovered, changed his vote and voted with the four Justices who thought the tax had been legally collected. At the same time he wrote an opinion in which he stated that he still adhered to his original belief that the levy of the tax was illegal and gave his reasons therefor. But he said that he would change his vote for the sole purpose of breaking the deadlock and allowing the company to ask that the case be reviewed by the Supreme Court of the United States (R. 62-64). He did change his vote and thus the judgment of the lower Court was affirmed. It is this judgment reached by the Court below in this unusual manner which is now under review.

FACTS.

The case in both lower Courts was submitted upon an Agreed Statement of Facts, set forth in the record at pages 24-29. This agreed statement establishes the following facts:

(1) Petitioner is a corporation duly organized and existing under the laws of the Philippine Islands and is and was at all material times the owner and operator of a sugar mill at Del Carmen, Pampanga, Philippine Islands, there engaged in the production of raw centrifugal sugar. (R. 24, 25.)

(2) Respondent was at all material times the Collector of Internal Revenue of the Philippine Islands. (R. 24.)

(3) In the operation of its mill, petitioner mills sugar cane grown on lands other than those belonging to petitioner. Said sugar cane is delivered to petitioner by the owners thereof under contracts called "milling contracts." These contracts provide that petitioner shall mill the cane and *receive as compensation for its services in milling said cane,* one-half of the resulting centrifugal sugar, the owners of the cane receiving the other half of said sugar. (R. 25.)

(4) During the third and fourth quarters of 1920, all of 1921 and the first and second quarters of 1922, petitioner received as its one-half of the sugar so produced under the foregoing contracts, raw centrifugal sugar which upon being sold had a sales value of 6,091,142 pesos (R. 26, 28).

(5) Respondent, as Collector of Internal Revenue of the Islands, claiming to act under the authority of Section 1459 of Act 2711, above set forth, levied and assessed against plaintiff a tax of one per cent of the sales value of said raw sugar so received by petitioner. Petitioner, in order to avoid penalties, paid this tax under protest to respondent, the amount of the payment being 60,911.42 pesos. (R. 28.)

(6) Petitioner had, prior to the payment of said tax, duly filed its protest that the taxes were illegal and that the said sales of sugar made by petitioner were particularly exempted from said tax by the terms of Section 1460 of the said Act 2711. After the payment of said tax, petitioner duly demanded the return thereof, which demand was refused. Thereupon peti-

tioner commenced this action against respondent, as Collector, to recover the amount of said payments (R. 28).

THE QUESTIONS INVOLVED.

There are two questions involved in this controversy:

First. Does the tax provided by Section 1459 of Act 2711 apply to such sales as were made by petitioner of the sugar received by it under the facts above set forth?

Second. If Section 1459 does apply to such sales, are such sales exempt from said tax by the provisions of Section 1460 of said Act?

Specifications of Error Relied Upon by Petitioner.

Petitioner relies upon errors of fact and of law committed by the lower Court as follows:

1. The Court erred in holding that the tax applied to all manufacturers who sell their output as an incident to their business, whereas the Court should have held that the tax applied to only those manufacturers who engage as merchants in the business of selling articles of their own production.

2. The Court erred in holding that petitioner, in making the sales of sugar in question, was a manufacturer who sold articles of its own production.

3. The Court erred in holding that petitioner was the producer of the sugar sold by it.

4. The Court erred in holding that the sales of sugar by petitioner were not exempt from the tax under the provisions of Section 1460 of Act No. 2711 of the Philippine Legislature.

SUMMARY OF ARGUMENT.

1. The tax is a tax on sales by merchants, as distinguished from sales by others not engaged in selling as merchants.

2. The term, "merchant," as used in Section 1459 does not include all manufacturers, but only such manufacturers as are engaged as merchants in the business of selling goods of their own production.

3. The petitioner was merely hired by the growers of the cane to mill the cane and extract the sugar therefrom. For its services in this respect, it received fifty per cent of the resulting sugar. Under these circumstances, petitioner was not the producer of the sugar any more than it would have been such producer had it been hired by the growers to mill the cane for a cash consideration.

4. Even if it be held that petitioner was the producer of the sugar and sold the same as a merchant, and that the sales of the sugar by petitioner thus come within the provisions of Section 1459, still raw centrifugal sugar is an agricultural product and Section 1460 particularly exempts from the tax sales of agricultural products when such sales are made by the producer.

5. Sales of agricultural products under Section 1460 are also exempt if made by any person other than a merchant or commission merchant. The term, "merchant," in this section cannot include petitioner, even if petitioner be included within the meaning of the word, "merchant," under Section 1459.

6. Statutes providing special taxes are to be construed most strongly against the Government and in favor of the tax payer. All doubts are to be resolved against the Government.

7. All exemptions from special taxes are to be given a liberal construction in favor of the person claiming exemption.

8. If this tax were properly levied against petitioner, then petitioner will be subject to a double tax for the same operation, one under section 1459 and one under section 1462.

9. While under ordinary circumstances this Court will follow the interpretation of a local statute made by the Supreme Court of the Islands, nevertheless the decision in this case cannot be held to be such an interpretation. For three years, the Philippine Supreme Court was evenly divided, and finally one of the Justices changed his vote solely for the purpose of breaking the deadlock and having the case determined by this Court. Moreover, it is not necessary to interfere with any part of the decision interpreting the statute in order to reverse it. The decision of the Philippine Court is based upon one fundamental conclusion, that is, that the petitioner was the producer of the sugar. This conclusion has nothing to do with interpreting a statute. If this conclusion be wrong, then the judgment must be reversed because it is only the producer that comes within the purview of the tax. The Azucarera case, which is claimed as another interpretation of this statute, was based upon the conclusion of the Court that the sugar mill in that case was the purchaser of the sugar cane. Again, this is not an interpretation of the statute but an interpretation of a contract. Also in the Azucarera case the Court was evenly divided, four Justices voting for a reconsideration and four voting against such reconsideration.

ARGUMENT.

I.

The Tax Is a Tax Upon Sales by Merchants.

That the tax provided is a tax upon sales by merchants is evidenced by the wording of the Act. The heading of Section 1459 is as follows:

> *"Percentage Tax on Merchants' Sales."*

Thus the very heading or title of the section indicates that it provides a tax upon sales by merchants only.

The section then begins as follows:

> "All *merchants* not herein specifically exempted shall pay a tax of one per centum on the gross value in money of commodities, goods, wares and merchandise sold, bartered, exchanged or consigned abroad by them."

The word, "merchant," is then defined as follows:

> "Merchant, as here used, means a person *engaged* in the sale, barter or exchange of personal property of whatever character."

The word, "engaged," is defined as follows by the Standard Dictionary:

> "To busy oneself; to be occupied or devoted; take part, as to engage in trade."

It seems clear that the tax is a tax upon sales by *merchants*, as distinguished from sales by persons not *"engaged"* in the business of buying and selling goods. Obviously, it would not include a casual sale

of some item of personal property made by a man not "engaged" in buying and selling. For example, the tax would not apply to a sale made by a doctor of his old automobile, because such doctor is not, in the words of the statute, "*engaged*" in selling personal property.

The Supreme Court of the Islands has interpreted this Act in precisely the same way. In the case of Central Azucarera v Trinidad, 46 Phil. 492, the Court used the following language concerning this very tax:

> "The tax we are considering is a tax on certain transactions which are made taxable when carried out by merchants as distinguished from persons who do not *devote* themselves to commercial operations."

So we must conclude that the tax is a tax upon sales by merchants, not a tax upon incidental or casual sales made by others not engaged as merchants.

II.

The Term, "Merchant," as Used in the Act Does Not Include All Manufacturers But Only Such Manufacturers as Are Engaged as Merchants in Selling Goods of Their Own Production.

The Act provides that manufacturers who sell articles of their own production shall be included in the term "merchant," and thus become subject to the tax. The clause in the Act concerning manufacturers is as follows:

> "Merchant, as here used, means a person engaged in the sale, barter, or exchange of personal

> property of whatever character. Except as specially provided, the term includes manufacturers who sell articles of their own production and commission merchants having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected, but does not include merchandise brokers."

The term, "merchant," in its ordinary sense means a person who is engaged in the business of buying and selling merchandise. Some merchants, instead of buying all their merchandise, manufacture a portion of the articles they sell. In order to make it perfectly clear that manufacturers who engage as merchants in selling articles of their own production would be subject to the tax, the clause above-quoted with regard to manufacturers was included. This in no manner qualifies the previous definition that a merchant is one who is "*engaged*" in the business of selling. The clause covering manufacturers when read in connection with the previous clause, means that only those manufacturers who *engage* in selling articles of their own production as a business are subject to the tax.

All manufacturers must, of course, sell their product. Otherwise, they could not continue to manufacture. But the ordinary manufacturer is not *engaged* in the business of selling. His selling is a mere incident to his business of manufacturing.

As the court said in *Re Rheinstrom & Sons Co.*, 207 Fed. 119, in speaking of a manufacturer:

> "Ordinarily, at least, he must be a seller, for in the very nature of things he cannot keep making things. It is essential for him to sell the things which he makes in order to keep going."

In the case of *People ex rel Tiffany v. Campbell*, 144 N. Y. 166, the Court said:

> "Without the power of sale, the business of production could not be carried on. The power to sell is an indispensable adjunct to a manufacturing business."

In the note to *21 Ann. Cas. 78*, it is said:

> "Every manufacturer must sell his wares; but he is not for that reason to be classed as a dealer in such goods."

In the case of *Phillips v. Byers*, 189 Cal. 665, the Court said at page 671 of the opinion:

> "It follows that one who simply manufactures an article and sells it is not a merchant and that although a manufacturer may also be a merchant if he buys and sells goods, he does not become one by disposing of the goods he has produced, at a manufacturer's profit."

See also *Chattanooga Plow Co. v. Hays*, 125 Tenn. 148. *Ong Chew Lung v. Burnett*, 232 Fed. 853.

Assume that a manufacturer of railroad cars, at the beginning of a year, sells his entire output for the year to a single purchaser. Such manufacturer cannot be said to be a merchant, nor can he be said to be engaged in the sale of cars. He is engaged in the business of manufacturing cars, and the selling of those cars is a mere incident to his business of manufacturing.

In its opinion the Supreme Court of the Philippines says that petitioner produced the sugar, and sold it, and that makes the sales by petitioner subject to the

tax. But such a holding would include all manufacturers, because all manufacturers produce something and sell the product. Had it been the intention to include all manufacturers in the tax, it would have been a simple matter to have merely said that the term, "merchant," includes all manufacturers. But the Act does not say so. It says the term, "merchant," includes "*manufacturers who sell articles of their own production,*" and by the context we have shown this to mean such manufacturers as "engage," as merchants, in the business of selling their own products.

That the tax provided is one on sales by those engaged in the business of selling is further evidenced by the clause which includes commission merchants in the term, "merchant." The pertinent provisions of this clause are as follows:

> "Commission merchants having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected."

So that a commission merchant, even though he might not be a merchant in the ordinary sense, because he does not buy his goods but sells the goods of others on commission, still under this section, if he has an establishment where he keeps these goods on display and engages in selling them, becomes a merchant within the meaning of the Act and his sales so made are subject to the tax. The very next clause of the Act exempts merchandise brokers who merely take orders and do not have on hand the goods they sell.

So that the whole import of the Act seems to be to levy a tax on sales made by merchants, or if not by merchants in the technical sense, then by persons en-

gaged in the business of selling in the same manner as merchants are engaged in the business of selling. As the Act itself so imports, and as the Supreme Court of the Islands held in the Azucarera case, 46 Phil. 492, *supra*, that the tax was a tax on sales "*by merchants as distinguished from persons who do not devote themselves to commercial operations,*" it would seem that a manufacturer, who is not engaged in the business of selling his products as a merchant but merely sells his output as an incident to his business of manufacturing, would not come within the purview of the statute.

III.

Under the Milling Contracts Between Petitioner and the Growers of the Cane the Sugar Is Not Produced in a Legal Sense by the Petitioner. Therefore, Petitioner Is Not a Manufacturer Who Sells Articles of Its Own Production and Thus Is Not Subject to the Tax.

The sugar, sold by petitioner and upon which sale it paid the tax in controversy, was produced at the mill of petitioner under contracts with the owners of the cane. These contracts provided that petitioner should mill the cane and

> "as compensation for its services in milling said cane plaintiff (petitioner) receives 50 per cent of the resulting centrifugal sugar and the sugar cane growers receive the remaining 50 per cent of the resulting centrifugal sugar." (R. 25.)

It is to be observed that petitioner did not grow the cane; it did not purchase the cane; at no time did it

ever become the owner of the cane. It simply milled cane belonging to others and, as compensation for what it did, received one-half of the resulting sugar. Such a transaction is not a purchase by petitioner of the sugar cane; it is a bailment. It was only by way of compensation for services rendered that any property in the manufactured product of raw sugar passed to the sugar mills, and this was only after the conversion had been complete and in lieu of a money payment.

There has been no tax levied against the sales by the cane growers of their one-half of the sugar. (R. 59.) Obviously under the exemption of Section 1460 (b) no tax could be levied on such sales. So that had the growers paid petitioner for its services in milling the cane in money, and had all the sugar been sold by the growers, no sales of any portion of this sugar would have been taxed. What legislative intent, then, can be presumed that would place this burden on the miller's half of the sugar when the miller is only changing into money his payment for services performed for the grower? The most fundamental economic reasoning shows that the burden of this tax would eventually fall back on the grower of the agricultural product, the very person the Act was aimed to protect.

The policy of the legislature to protect agricultural products was enunciated in Section 1460 (b). A construction of this section that will permit a tax on even the miller's one-half of the agricultural product would to that extent defeat the legislative intent of rendering protection to this initial stage in the sugar's economic progression.

Petitioner not the producer of the sugar.

The Supreme Court of the Philippines held that under this contract between petitioner and the grower of the cane that the petitioner was the producer of the sugar. The whole decision of the Court is based upon this one conclusion. But if this conclusion be wrong and petitioner be not the producer, then the tax was illegally levied because it is only such manufacturers as sell articles of their own production that are subject to the tax.

Undoubtedly, if petitioner had grown the cane and then extracted the sugar, it would be the producer of the sugar. Doubtless if it purchased the cane and then extracted the sugar, it would be the producer of the sugar. But petitioner neither grew the cane nor purchased it; it merely contracted, for a compensation, to mill cane belonging to others.

The reason why petitioner's compensation in this case is not fixed in terms of money, but instead is fixed at a certain portion of the product, is obvious. The sugar central cannot operate without sugar cane; on the other hand, the planters cannot have the sugar without the central. One must necessarily depend upon the other. A loss on the part of the planters will necessarily be reflected in the operation of the central by a reduction of its cane supply. If the parties fix the compensation of the central in terms of money, this will necessarily be in an amount to afford the central a proper margin of profit. If the prices of sugar should be low, there may be a time when the central would make money while the planter would be losing. Each party being in a way dependent upon the other, a cooperative arrangement had to be arrived at. Such an arrangement could only be made

in such a way that both parties must bear the risk of a fluctuation in prices. It could have been a certain portion of the sales proceeds of the product, but in that case the question as to who should have the last say in the sale of the sugar would complicate matters, and in most instances create friction between the parties. For these reasons petitioner's compensation was fixed in a certain portion of the resulting sugar.

As we have seen, the transaction between the grower of the cane and the mill owner is a bailment. The grower retains the title to the cane at all stages. He also retains his title to the sugar in the cane, at least to the point where the sugar is actually separated and becomes a separate entity. If we concede that at that point the title to one-half the sugar vests in the mill owner, it is only because he has earned that half for completing the contract pro tanto.

If the mill owner failed to complete what he had contracted to do; if, for example, he crushed the cane but failed to put it through the centrifugal cylinders which finally extract the sugar, he would neither have earned nor received title to any part of the sugar or of the cane. He had agreed to mill the cane, i. e., to crush the cane and extract the sugar. Until he had completed his contract as to some portion of the cane, no compensation was due him, and he could not claim title to any portion of the material on which he was working. After the contract is completed and the sugar produced, the mill owner receives one-half the sugar produced as his compensation. Admitting for the argument that he receives the title to his half as rapidly as produced, still, after all, he is in the same position as any man who has been hired with his tools to do a certain job for compensation.

Assume that the plantation owner, the grower of the cane, had a sugar mill of his own on his plantation, and there milled the cane he had grown. Under such circumstances the grower would, undoubtedly, be the producer of the sugar. Is the grower any the less the producer if he employs some one else to mill his cane? If a farmer hires one man to plant his corn, another to harvest it, and still a third to grind it into meal, is not the farmer the producer of the meal?

Under the circumstances of this case, where the grower not only grew the cane but hired the mill owner to crush it and extract the sugar, it seems reasonably clear that the man who *produced* the sugar was the man who grew the cane and hired it milled. If this conclusion be found correct, then the tax in this case was illegally collected because petitioner, in selling its half of the sugar, was not selling articles of its own production.

But if it be held that petitioner was the producer of the sugar, then Section 1460 of the Act specifically exempts sales of such sugar from the tax.

IV.

If Notwithstanding the Foregoing Argument It Be Held That Petitioner Is a Merchant and the Producer of the Sugar, Still Raw Centrifugal Sugar Is an Agricultural Product and the Sales by Petitioner of This Agricultural Product are Exempt From the Tax Under the Provision of Section 1460.

We have heretofore attempted to establish three propositions:

> *1st.* That the tax is a tax on sales by merchants, not a tax on sales when made by others than merchants;

2nd. That only such manufacturers as *engage* in selling their own products *as merchants* come within the purview of the tax;

3rd. That the sugar was not produced by petitioner so that by the express terms of the statute, the tax does not apply to the sales by petitioner.

But if it be held that any manufacturer who sells his own product, not as a merchant but merely as an incident to his business of manufacturing, is subject to the tax, and also that under the peculiar circumstances of this case, the petitioner was the producer of the sugar, then we think it clear that the sales under discussion of raw, centrifugal sugar by the producer of that sugar are exempt from the tax by the express provision of Section 1460 of the Act. Section 1460 is as follows:

> "*Sales Not Subject to Merchants' Tax.*—In computing the tax above imposed, transactions in the following commodities shall be excluded; (a) Things subject to a specific tax; (b) Agricultural products when sold by the producer or owner of the land where grown, or by any other person other than a merchant or commission merchant, whether in their original state or not."

It will thus be seen that sales of agricultural products when sold by the producer or owner of the land where grown or by any person other than a merchant or commission merchant are exempt from the tax, and even if sold by a merchant or commission merchant, still if that merchant or commission merchant happens to be the producer of the agricultural product, or the owner of the land where the agricultural product is grown, then such sale is likewise exempt. The only

sales of agricultural products that are not exempt are sales by a merchant or commission merchant who is not the producer of the product nor the owner of the land where the product was grown. All other sales of agricultural products are, by the express terms of the statute, exempt.

Raw centrifugal sugar is an agricultural product.

While the term "agricultural products" in a limited sense means only such products as are the direct result of the culture of the soil in their natural condition without having gone through any manufacturing process, still in a broader sense the term includes products which have gone through some process of manufacture in order to make such products suitable for use. Butter is in a sense manufactured, still it is considered an agricultural product. Raisins have gone through some process of manufacture, but nevertheless are an agricultural product.

Webster's International Dictionary, after other definitions of agriculture, says:

> "In a broader sense the science and art of the production of plants and animals useful to man, including to a variable extent the preparation of these products for man's use. In this broad use it includes farming, horticulture and forestry, together with such subjects as butter and cheese making, sugar making, etc."

The original form of the agricultural product containing the sugar is the sugar cane which the land produces. The sugar exists in the cane before milling. The milling does nothing but separate the sugar from the juice and from the fibrous material constituting

the bulk of the cane. The cane is first crushed and by this process the juice of the cane containing the sugar is separated from the fibre. The juice after concentration is given a strong centrifugal movement which separates the crystals of sugar from the molasses.

The process of separating the sugar from the molasses is very similar to the process of separating cream from milk. The same centrifugal movement is used in the one process as in the other. In the creamery, the milk is given a rapid centrifugal movement which throws the heavy part of the milk to the outside, leaving the lighter part in the center. The cream, being lighter, remains in the center, the remainder of the milk going to the outside. The cream has merely been separated from the milk, exactly as the sugar has been separated from the molasses.

The terms of the Act itself indicate that such products as sugar that have gone through some manufacturing process are included in the exemptions. It is to be noted that sales of agricultural products are exempt by the express words of the statute,

"Whether in their original state or not."

It is true that the raw centrifugal sugar is not in the same state as when it first comes from the plantation. The process of separating the sugar from the cane has been employed. So that, doubtless, the legislature, in exempting argicultural products, "whether in their original state or not," must have particularly had in mind such products as sugar which cannot be ordinarily marketed without some mechanical operation to place them in marketable form.

Sales by petitioner of this raw sugar are expressly exempted from the tax.

The statute exempts from the tax sales of agricultural products in the following words:

> "Agricultural products when sold by the producer or owner of the land where grown, or by any other person than a merchant or commission merchant."

Sales of agricultural products are thus exempt from the tax in three specified instances:

(1) If made by the producer;
(2) If made by the owner of the land where the agricultural product is grown;
(3) If made by any other person than a merchant or commission merchant.

We have already seen that unless petitioner is the producer of the sugar there is no tax upon the controverted sales, because the tax only applies to manufacturers "who sell articles of their own production." So that unless it be held that petitioner is the producer of the sugar, there is no tax. But if petitioner be the producer of the sugar, then the sales of this sugar are exempt from the tax by the express provisions of Section 1460.

The Supreme Court of the Islands held directly that petitioner was the producer of the sugar. Indeed, it was compelled to so hold in order to justify its decision that the levy of the tax was valid, because it is only manufacturers who sell articles which they produce who are included within the statute. But during the entire course of its rather lengthy opinion, the court, while referring to the exemptions under Section 1460

and quoting the provisions of the section, never considered or discussed in any manner whether the sales by petitioner were exempt under that section.

One may take either horn of the dilemma and the result is the same. Unless petitioner is the producer of the sugar, the sales do not come within the purview of the tax under Section 1459, and if petitioner be the producer, then sales of this agricultural product by the producer are exempt from the tax under the provisions of Section 1460. Petitioner is either the producer of the sugar or it is not the producer. Either way, there is no tax.

Sales by petitioner also exempt because petitioner is neither a merchant nor commission merchant within meaning of Section 1460.

The sales by petitioner are also exempt because all sales of agricultural products are exempt unless made by a merchant or commission merchant. The words of exemption in the statute are:

> "Agricultural products when sold by * * * any other person other than a merchant or commission merchant."

As there can be no contention that petitioner is a "commission merchant," it follows that unless petitioner is a "merchant" within the meaning of this section that there can be no tax, for in that event the sale would have been made by some person, "*other than a merchant or commission merchant.*"

Petitioner not a merchant within meaning of Section 1460.

Petitioner is, of course, not a merchant in the ordinary sense of that word. So unless the word "merchant" as used in Section 1460 has the same special meaning as it has in Section 1459, that is, unless the word "merchant" as used in section 1460 also includes manufacturers, then the sales by petitioner are exempt by the express words of the statute. The word "merchant" as used in Section 1459 includes "manufacturers who sell articles of their own production." This is true solely because the section says so.

We call attention to the wording of Section 1459. It says:

> "'Merchant' as *here* used means • • • it includes manufacturers who sell articles of their own production."

The word "here" must mean the particular section. It cannot mean wherever used in the more than a thousand sections comprising the Act. It might mean wherever used in connection with the tax being covered but the wording of the next section indicates that the definition of the word, "merchant," as found in Section 1459, applies only to that section.

Section 1459 also says that the word "merchant" includes "*manufacturers • • • and commission merchants.*" Section 1460 says sales of agricultural products are exempt when sold by any one not a "*merchant or commission merchant.*" The word "merchant" in Section 1459 includes commission merchants. The word "merchant" in Section 1460 cannot include commission merchants because the section says that sales

of agricultural products are exempt when made by any one "not a 'merchant' or commission merchant." If the word "merchant" includes commission merchants then the added words, "or commission merchant," are entirely useless. It is against the plainest rules of statutory construction to attach no meaning to these words. The rule is that no words are to be considered superfluous but that all words used should be given a meaning not inconsistent with the rest of the language. If the word "merchant" be used in the exemption clause of Section 1460 in its ordinary sense, then the added words "or commission merchant" have a plain and obvious meaning. It seems clear, therefore, that the word "merchant" as used in Section 1460 does not include manufacturers and commission merchants, but is used in its usual and ordinary sense. The Legislature apparently intended to exempt sales of agricultural products when made by any one "not a merchant or commission merchant" in the ordinary meaning of those words.

That all words of a statute are to be given a meaning and that none are to be regarded as superfluous, see the following cases:

Lawrence v. Allen, 7 How. 785, 793 of opinion.
Bend v. Hoyt, 13 Pet. 263.
Wilmot v. Mudge, 163 U. S. 217—page 221 of opinion.
Montclair v. Ramsdell, 107 U. S. 147 page 152 of opinion.
Hurtardo v. California, 110 U. S. 516.

V.

Statutes Providing Special Taxes Are to Be Liberally Construed in Favor of the Taxpayer; All Doubts Are to Be Resolved Against the Government.

It is an established rule of statutory construction, applicable to all statutes providing for special taxes, that all doubts are resolved in favor of the taxpayer and against the Government.

In the case of American Net and Twine Co. v. Worthington, 141 U. S. 468, the question was whether certain import duties applied to certain articles. The Court said:

> "Were the question one of doubt, we should still feel obliged to resolve that doubt in favor of the importer, since the intent of Congress to impose a higher duty should be expressed in clear an unambiguous language."

In the case of Gould v. Gould, 245 U. S. 151, the question was whether the income tax applied to receipts of alimony. The Court said:

> "In the interpretation of statutes levying taxes, it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operation so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the Government, and in favor of the citizen. United States vs. Wigglesworth, 2 Story, 369; American Net and Twine Co. v. Worthington, 141 U. S. 468; Benziger v. United States, 192 U. S. 38."

In United States v. Merriam, 263 U. S. 179, the Court said:

> "In statutes levying taxes the literal meaning of the words employed is most important for such statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful the doubt must be resolved against the Government and in favor of the taxpayer."

All exemptions from special taxes must be given a liberal construction in favor of the person claiming exemption.

It is also an established rule of statutory construction that all exemptions from *special* taxes must be given a liberal construction in favor of the person claiming exemption. This is exactly the converse of exemptions from *general* taxes where the rule is that such exemptions must receive a strict construction.

In the case of Eidman v. Martinez, 184 U. S. 578, the question was whether a certain estate was subject to the inheritance tax. The Court said at page 583 of the opinion:

> "It is an old and familiar rule of the English Courts, applicable to all forms of taxation and particularly special taxes, that the sovereign is bound to express its intention to tax in clear and unambiguous language, and that a liberal construction be given to words of exception confining the operation of duty, (Citing cases) though the rule regarding exemptions from general laws imposing taxes may be different." (Citing Cooley on Taxation, sec. 146 and In Matter of Enston, 113 N. Y. 174.)

In Re Enston's Estate, 113 N. Y. 174, 21 N. E. 87. This case involved the construction of an inheritance tax of the State of New York. The estate claimed exemption because Mrs. Enston was not a resident of the State of New York at the time of her death. The Court said:

> "The tax imposed by this Act is not a common burden upon all the property, or upon all the people within the state. It is not a general, but a special tax, reaching only to special cases, and affecting only a special class of persons. The executors in this case do not, therefore, in any proper sense claim exemption from a general tax or a common burden. * * * If they were seeking to escape from general taxation, or to be exempted from a common burden imposed upon the people of the state generally, then the authorities cited by the learned counsel for the people, to the effect that an exemption thus claimed, must be clearly made out, would be applicable. But the executors come into court claiming that the special taxation provided for in the law of 1885 is not applicable to them, or the property which they represent. In such a case they have the right, both in reason and in justice, to claim that they shall be clearly brought within the terms of the law before they shall be subject to the burdens. It is a well established rule that a citizen cannot be subjected to special burdens without the clear warrant of the law." (Citing-Cooley on Taxation, 2nd Ed. 275; U. S. v. Wigglesworth, 2 Story 373; Powers v. Bonney, 5 Blatchf, 203; U. S. v. Watts, 1 Bond 583; Doe v. Snaith, 8 Bing. 152; Green v. Howay, 101 Mass. 248.)
>
> See also Cooley on Taxation, Fourth Edition, Sec. 673.

VI.

The Policy of the Philippine Government Has Persistently Favored Agricultural Products and Especially Sugar.

In Section 142 of Act No. 1189 of the Philippine Commission, is found the original exemption of agricultural products from the sales tax, which that Act imposed. That exemption is as follows:

> "SEC. 142. The following persons shall be exempted from the payment of the taxes imposed in section one hundred and thirty-nine:
>
> "(a) Agriculturists, on all products of their own production sold by them.
>
> • • • • • • • •
>
> "(g) Persons whose manufactures consist solely in harvesting and getting into proper condition for their own use or for sale the products of the lands owned or occupied by them, such as the cutting and drying of copra and threshing of rice."

In 1914, Act No. 2339 was passed, revising and consolidating former internal revenue laws. The corresponding provision in this Act is Section 41, which reads:

> "Sales not subject to merchants' tax.—In computing the tax above imposed transactions in the following commodities shall be excluded:
>
> "(a) Merchandise actually exported by the vendor;
>
> "(b) Things, other than opium, subject to a specific tax;

"(c) Agricultural products when sold by the producer or owner of the land where grown whether in their original state or not."

This section was later amended by Section 3 of Act No. 2541 which was passed on December 21, 1915, for the purpose, as its title states, of "changing the rates of taxes and additional taxes, creating new taxes, abolishing others, and for other purposes." Said section as amended by Act 2541, is incorporated verbatim in Section 1460 of the Administrative Code. It reads:

"SEC. 41. Sales not subject to merchant's tax. —In computing the tax above imposed, transaction in the following commodities shall be excluded:

"(a) Things subject to a specific tax;
"(b) Agricultural products when sold by the producer or owner of the land where grown, or by any other person other than a merchant or commission merchant, whether in their original state, or not."

Act No. 2541, which exempts "any other person, other than a merchant or commission merchant," dealing in agricultural products, whether in their original state or not, from the payment of the merchants' tax was passed in December of 1915. Only ten months before, to be exact, on February 5, 1915, the Philippine Legislature passed Act No. 2479 creating the Sugar Central Board. Section 2 of the Act reads:

"SEC. 2. It shall be the duty of this board to promote and aid in the establishment of sugar centrals with their machinery, equipment, rights of way, railroads, and other appurtenances for

the manufacture of sugar and industries derived therefrom in the sugar-producing provinces, if in its judgment the local conditions warrant the establishment of a sugar central."

Under this Act, the Government authorized the investment of two million pesos of the gold standard fund in bonds of such sugar centrals. The Legislature made it clear that it was the object of the Act to promote and assist the establishment of sugar centrals in the Philippine Islands.

It is thus clearly established that the policy of the Philippine Government has consistently favored agricultural products and especially sugar. This being true, it emphasizes the general rule that unless it be clear and free from doubt that this special tax applies to the sales of sugar made by petitioner, then it should be held that the tax does not apply. It also emphasizes the rule that the exemption from this special tax should receive a liberal construction in favor of the exemption. And it adds force to the general rule that all doubts are to be resolved against the Government and in favor of the taxpayer.

VII.

If Sugar Centrals Must Pay the Tax Under Section 1459, Then They Will Be Subject to Double Taxation Because They Are Expressly Made Subject to a Tax of One Per Cent Under Section 1462 of the Same Act.

Prior to March, 1923, Section 1462 of Act 2711, the Administrative Code of 1917, provided for a tax of one per cent on certain contractors, but did not by name include sugar centrals. Notwithstanding this, the Col-

lector of Internal Revenue under some circumstances had been taxing sugar centrals at one per cent of the value of their output under Section 1462, upon the theory that they were contractors under that section. The validity of this tax was called in question in the case of La Carlotta Sugar Central v. Trinidad, 43 Phil. 816. In that case the Supreme Court of the Islands held that sugar centrals were not subject to the tax under Section 1462. The decision was rendered September 26, 1922. Thereupon the Philippine Legislature in March, 1923, passed an amendment to Section 1462 which by express terms made the tax apply to sugar centrals. Section 1462, as amended in 1923, is as follows:

> "SEC. 1462. Percentage tax on road, building, irrigation, artesian well, waterworks, and other construction work contractors, proprietors or operators of dockyards, and others—Road, building, irrigation * * *, and other construction work contracts, * * * proprietors or operators of dockyards, * * * *sugar centrals*, and rice mills; persons selling light, heat or power; keepers of hotels, restaurants, cafes, or refreshment parlors; **and warehousemen, stevedores, dressmakers,** * * * shall pay a tax equivalent to one per centum of their gross receipts; * * *."

There is nothing in Section 1462, as so amended, which would exempt the business therein taxed from the payment of the taxes provided in Section 1459; nor is there a provision in the last named section which would exempt a business paying a tax thereunder from the payment of the tax provided in Section 1462, as amended. On the other hand, Section 1453 of the Administrative Code of 1917 provides, in part:

> "* * * The tax on business is payable for every separate or distinct establishment or place where business subject to the tax is conducted; and one occupation or line of business does not become exempt by being conducted with some other occupation or business for which such tax has been paid."

It is, therefore, clear that should it be decided that the transactions involved in these proceedings are taxable under Section 1459, then such transactions would eventually be subject to the payment of two taxes,—those under Section 1459 and those under Section 1462, as amended. We submit that this could not have been the intention of the Philippine Legislature. Double taxation is always contrary to good government and should not be presumed as being intended by any legislature unless such intention is clearly expressed. Especially must this be true as to agricultural products which have been consistently favored by the Philippine Legislature.

Statutes are to be construed if possible so as to avoid hardships, injustice or inequality.

It is a well established rule of law that in the construction of statutes, that construction is to be adopted wherever possible which will avoid injustice, hardship, or inequality.

In the case of United States v. Kirby, 7 Wall. 482, the Court said:

> "All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression or an absurd consequence."

This extract from the opinion in United States v. Kirby was quoted with approval in Jacobsen v. Massachusetts, 197 U. S. 11.

In Knowlton v. Moore, 178 U. S. 41, the Court said on page 77 of the opinion:

> "We are, therefore, bound to give heed to the rule, that when a particular construction of a statute will occasion great inconvenience or produce inequality and injustice, that view is to be avoided if another and more reasonable interpretation is present in the statute."

See also Lau Ow Bew v. U. S., 144 U. S. 47.

The construction of this statute so as to make it apply to the sales of sugar made by petitioner will occasion injustice and inequality and, therefore, under the above authorities is to be avoided.

VIII.

Rule That This Court Will Follow the Decisions of the Philippine Supreme Court in Interpreting a Local Statute Has No Application to This Case.

It is contended by respondent that the Territorial Supreme Court had twice interpreted the statute covering this tax and that this Court, following its well-known rule, will follow the local Court in the interpretation of a local law. One of the interpretations claimed is in the present case. But we have already seen that the local Court was evenly divided for three years and that finally one of the Justices changed his vote for the sole purpose of breaking the deadlock and allowing the matter to be decided by this Court.

This clearly cannot be such an interpretation as to invoke the rule.

The second interpretation claimed is the case of Central Azucarera de Bais v. Trinidad, 46 Phil. 492. At the time of that decision there was a vacancy in the Court. Under the statute, Section 138 of Act No. 2711 (the Administrative Code of 1917), when there is a vacancy in the Court, the concurrence of four judges "shall suffice for the pronouncement of the judgment." Under these circumstances, the judgment was rendered with the concurrence of four judges only, three dissenting and one being absent on vacation. Thereafter upon the return of the absent Justice, a motion for reconsideration was made. Upon that motion the Court divided evenly four to four, the motion was thus denied.

We, of course, recognize the general proposition that in the interpretation of a local statute the decisions of the Supreme Court of the Philippines will be followed by this Court. Where, however, the Supreme Court of the Philippines is evenly divided, the rule ought to lose its force. The fact is that the Supreme Court of the Philippines is hopelessly divided on this question and has been from the first time this statute has been before it. We, therefore, say that the general rule has no application to this case.

Decisions relied upon are not interpretations of a statute, but interpretations of a contract and consequently rule fails.

However, if it be held that the circumstances under which these two decisions were rendered do not take them out of the general rule, still it makes no differ-

ence as the decisions themselves are not so much interpretations of the statute as interpretations of the contracts under which the sugar was produced.

It is true these two decisions do in some respects interpret the statute, but there is little controversy over such interpretation. The principal interpretation of the statute is found in the Court's ruling that the tax is a tax upon sales by merchants. With this interpretation, petitioner agrees. But petitioner can not agree with the Court's interpretation of the contracts involved.

In the Azucarera case, the Court held that under the contract in that case the sugar mill owner was the purchaser of the cane and based its decision upon that conclusion. This Court is not bound by the conclusion of the Philippine Court, that under the contract in that case the sugar mill was the purchaser of the sugar. Moreover, the decision of the Court in that case, being based upon the conclusion that the sugar mill was the purchaser of the cane, cannot be applicable to the present case where the petitioner did not purchase the cane but milled the cane for compensation.

In the present case, the Court held that under the milling contracts here involved, the mill owner was the producer of the sugar and based its decision on that conclusion. Again, this Court is not bound by such construction of the contract and we have complete freedom to challenge such construction.

We, therefore, submit that there has been no interpretation of this statute by the Supreme Court of the Philippines which prevents this Court from fully considering and deciding this case.

ADDITIONAL AUTHORITIES.

Petitioner Is a Manufacturer, Not a Merchant.

Century Dictionary, - sub Merchant;
Webster's Dictionary, - " "
Bouvier's Law Dictionary," "
Carr v. Riley, 198 Mass. 170;
Jewel v. Board of Trustees, 113 Ia. 147;
Union County Bank v. Ozan, 175 Fed. 710.

All Words of a Statute Must Be Given Some Meaning If Possible.

Ex Parte Public Bank, 278 U. S. 101.

CONCLUSION.

We think it clear that the following propositions have been established:

1. The tax does not apply to all manufacturers but only to those manufacturers who engage as merchants in the business of selling their own products.
2. If it be held that the tax under Section 1459 applies to all manufacturers, then the sales by petitioner of raw sugar upon which sales the taxes in controversy were collected, are expressly exempted from such tax by the provisions of Section 1460.

We respectfully submit that the judgment of the Supreme Court of the Philippine Islands should be reversed.

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